

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Calling Party Pays Service Option) WT Docket No. 97-207
in the Commercial Mobile Radio Services)

REPLY COMMENTS OF MOTOROLA, INC.

I. Introduction

Motorola, Inc. ("Motorola") hereby submits this reply to the opening comments filed in response to the Commission's September 24, 1997, Notice of Inquiry ("NOI") in the above-captioned proceeding.¹ As detailed below, the opening comments reflect nearly unanimous agreement that the widespread availability of a calling party pays ("CPP") service option for commercial mobile radio service ("CMRS") carriers would serve the public interest and should be given the opportunity to flourish.

Most commenters also agree that the specific recommendations set forth in Motorola's opening comments would help ensure that CPP is implemented effectively. In particular, the record supports FCC action that:

- ◆ establishes a national policy promoting the development of a uniform, nationwide CPP service option and announcing that barriers to the free market introduction of CPP will not be tolerated;
- ◆ makes clear that provision of CPP by CMRS carriers is voluntary and not mandated; and
- ◆ refers the technical issues associated with the implementation of nationwide CPP service to industry groups for resolution.

¹ *Calling Party Pays Service Option in the Commercial Mobile Radio Services*, WT Docket No. 97-207, FCC No. 97-341 (rel. Oct. 23, 1997) [hereinafter *NOI*].

As discussed in detail in Motorola's opening comments, formulation of a federal policy framework consistent with these recommendations will promote the public interest in several significant respects, including: (1) enhancing the competitive potential of CMRS offerings vis-à-vis traditional wireline local exchange services; (2) promoting more effective use of radio spectrum by facilitating greater wireless network usage; and (3) making more wireless service options available in response to the demands of consumers.

II. The Record Supports Establishment Of A National Policy Promoting The Widespread Availability Of Calling Party Pays

A. There Is Broad Agreement Among The Commenters That Widespread Availability Of CPP Will Benefit The Public Interest And Should Be Promoted At The Federal Level

The vast majority of the opening commenters agree with Motorola that widespread availability of a CPP service option will serve the public interest and should be encouraged.² A number of commenters also share Motorola's view that broader implementation of CPP will promote the public interest by increasing wireless network usage³ and by facilitating consumer

² See generally, e.g., Comments of AirTouch Communications, Inc. ("AirTouch"); Comments of AT&T Wireless Services, Inc. ("AT&T Wireless"); Comments of the Cellular Telecommunications Industry Association ("CTIA"); Comments of Celpage, Inc. ("Celpage"); Comments of Nokia Telecommunications, Inc. ("Nokia"); Comments of Omnipoint Communications, Inc. ("Omnipoint"); Comments of Paging Network, Inc. ("PageNet"); Comments of the Personal Communications Industry Association ("PCIA"); Comments of the Rural Telecommunications Group ("RTG"); Comments of Source One Wireless II, L.L.C. ("Source One"); Comments of Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS"); Comments of the Telecommunications Resellers Association ("TRA"); Comments of U S West, Inc. ("U S West"); Comments of United States Corporation ("USCC"); Comments of Vanguard Cellular Systems, Inc. ("Vanguard").

³ See, e.g., Comments of AirTouch, at 6; Comments of Nokia, at 1-3; Comments of Omnipoint, at 23; Comments of PCIA, at 10-13; Comments of RTG, at 2-3; Comments of Sprint PCS, at 6-7; Comments of USCC, at 4-5; Comments of Vanguard, at 6-8. See also Comments of Motorola, at 6.

acceptance of wireless offerings as viable alternatives to landline telephone services.⁴ In this connection, several wireless carriers stress that significant consumer demand for CPP is already apparent.⁵ For example, AirTouch notes that, in the Cincinnati market where AirTouch currently offers a CPP option, CPP has been elected by approximately 50 percent of the local subscriber base.⁶ Citing similar demand levels, Sprint PCS urges the Commission to ensure that “[w]ireless carriers . . . [are] empowered to offer services that respond to this clear consumer demand.”⁷

Numerous commenters also echo Motorola’s observation that, in order for CPP to be widely available, it is essential that the Commission enunciate a national policy declaring that CPP is in the public interest and promoting the effective development of nationwide CPP service.⁸ In this regard, Sprint PCS points out that:

The scattered experience the wireless industry has had attempting to offer CPP-based services in the United States has demonstrated graphically the need for a national policy to facilitate CPP. Attempts by carriers to offer CPP have led to differing and inconsistent state regulations; the only common elements in the state regulatory approaches to carrier requests to offer CPP have been delay in considering requests to offer CPP and an adverse view toward it.⁹

⁴ See, e.g., Comments of AirTouch, at 4, 6; Comments of Nokia, at 1-4; Comments of Omnipoint, at 19-20; Comments of PCIA, at 10-11; Comments of RTG, at 2-3; Comments of Sprint PCS, at 1-3; Comments of TRA, at 2; Comments of USCC, at 2-4; Comments of U S West, at 2; Comments of Vanguard, at 9. See also Comments of Motorola, at 4-6.

⁵ See, e.g., Comments of AirTouch, at 6; Comments of AT&T Wireless, at 2; Comments of Bell Atlantic, at 1-2; Comments of Sprint PCS, at 5; Comments of USCC, at 4-5.

⁶ Comments of AirTouch, at 6.

⁷ Comments of Sprint PCS, at 5.

⁸ See generally, e.g., Comments of CTIA; Comments of Nokia; Comments of Omnipoint; Comments of PCIA; Comments of Source One; Comments of Sprint PCS; Comments of USCC; Comments of Vanguard. See also Comments of Celpage, Inc., at 3-6 (supporting the establishment of national guidelines for various aspects of CPP provided by paging carriers).

⁹ Comments of Sprint PCS, at 16.

Sprint PCS adds that a national policy for CPP is necessary for a multitude of reasons, including the following: (1) CPP cannot be effectively implemented on a nationwide basis without a national policy; (2) only a single, nationwide policy can avoid a panoply of inconsistent state regulations that will prevent CPP from widespread use; (3) a national policy will promote consumer knowledge and acceptance of CPP; (4) nationwide consumer protection standards will be more effective; and (5) only a uniform national policy can permit federally licensed wireless carriers to offer CPP without risking inconsistent regulations in over fifty separate jurisdictions.¹⁰ Similar points are made by Vanguard, CTIA, and USCC, among others.¹¹

Summing up the position of these commenters, PCIA states that, “pronouncement of a federal policy in support of calling party pays and establishment of uniform, nationwide rules for this service is essential to the widespread introduction and ultimate acceptance of CPP.”¹² Motorola agrees and, based on the strong record support for this approach, reiterates its request

¹⁰ *Id.*, at 17-19.

¹¹ See Comments of Vanguard, at 12 (“CPP cannot be implemented if CMRS providers are subject to varying state regulations. Permitting states to impose regulations on the provision of CPP will create unsolvable practical problems, especially for traffic that has multiple jurisdictional components. Only national standards can prevent a patchwork of state regulations that would smother the development of CPP”); Comments of CTIA, at 3 (“[t]he Commission has a significant federal interest in ensuring the uniform, rapid development of CPP, free of redundant and burdensome State and local obligations”); Comments of USCC, at 7 (urging the establishment of uniform procedures in all markets so that CPP can be provided on a nationwide basis, which is “essential” so that cellular customers may enjoy the benefits of CPP while roaming in other markets); *cf.* Comments of U S West, at 6-9 (agreeing that, without a nationwide approach, leakage and a lack of uniformity of the product offering will prevent CPP from becoming wholly effective).

¹² Comments of PCIA, at 3.

that the Commission promptly establish a national policy declaring the provision of CPP by CMRS carriers to be in the public interest.¹³

B. The Opening Commenters Agree That The FCC Should Not Develop Detailed Federal Regulatory Requirements That Hinder Development Of CPP

In its comments, Motorola urged the Commission to refrain from issuing detailed regulations governing the provision of CPP, and suggested in particular: (1) that the Commission should not require CMRS carriers to offer CPP but rather, should allow CMRS operators to choose whether to do so voluntarily, as their business plans and customers' needs dictate;¹⁴ and (2) that the marketplace should determine the success or failure of CPP and the precise way in which CPP is offered, with industry segments working together to resolve the technical issues associated with

¹³ Significantly, although certain commenters oppose FCC regulatory intervention with respect to CPP, *see, e.g.*, Comments of SBC Communications Inc. ("SBC"), at 11-15, Comments of PageNet, at 6, no commenters specifically resist the mere establishment of a national policy promoting CPP. In fact, only one commenter, Bay Springs Telephone Company, *et al.*, ("Bay Springs") arguably contends that limited policies promoting CPP could somehow be injurious. Bay Springs alleges that, "implementation of the CPP service plan would cause customer confusion regarding the identity of the charging party, would result in loss of customer goodwill by the LECs, and would place a significant burden on smaller LECs which do not presently have the technical capability required to implement CPP." Comments of Bay Springs, at 6-7. Bay Springs' claims should be discounted for the following reasons. Initially, Bay Springs does not provide any evidence in support of the contention that implementation of CPP could cause customer confusion or result in a loss of goodwill toward LECs. Furthermore, these allegations, as well as Bay Springs' claim that implementation of CPP would place a significant burden on smaller LECs, appear to be based on the assumption that the FCC will require LECs to bill and collect for CPP. This is not necessarily the case. As discussed in the next section of this pleading, the specific aspects of billing and collection for CPP is one of many implementation issues that Motorola suggests should be referred to an industry body to be resolved through a cooperative effort. Issues concerning any burden on small LECs can and should be taken into account as part of that process.

¹⁴ *See* Comments of Motorola, at 18-19.

the implementation of CPP.¹⁵ As discussed below, virtually all of the commenters addressing these issues advance an identical viewpoint.

Initially, no commenters suggest that the Commission should *require* CMRS carriers to offer CPP. Quite to the contrary, a broad range of commenters – including both wireless carriers and local exchange carriers – stress the importance of ensuring that the provision of CPP by CMRS operators is voluntary only.¹⁶ In this connection, PCIA notes that affording CMRS carriers the flexibility to decide voluntarily whether or not to provide CPP service is the most efficient regulatory response and will not undermine the availability of CPP because:

Given the competitive nature of the wireless market, a number of carriers in each market will inevitably offer calling party pays as a means of distinguishing their services from those offered by other providers. In addition, such a market-driven process is more efficient than mandating that all CMRS carriers offer calling party pays because it allows *consumers* to drive the choice of whether they want this feature, and, if so, how much they are willing to pay for it.¹⁷

Likewise, a broad array of commenters agree that market forces should determine the success or failure of CPP as well as the details concerning the way in which CPP is offered. In this regard, Motorola suggested in its opening comments that the Commission refrain from issuing regulations governing CPP pricing structures or levels¹⁸ and refer to industry groups resolution of the technical issues associated with the implementation of a

¹⁵ See *id.*, at 15-20.

¹⁶ See, e.g., Comments of AirTouch, at Summary, p. 3; Comments of AT&T Wireless, at 3; Comments of Centennial Cellular Corp. (“Centennial Cellular”), at 1-2; Comments of GTE, at 11; Comments of PageNet, at 2; Comments of PCIA, at 13-14; Comments of the United States Telephone Association (“USTA”), at 2, 4.

¹⁷ Comments of PCIA, at 13-14 (emphasis in original).

¹⁸ Comments of Motorola, at 19.

nationwide CPP option, including: (1) establishment of procedures to enable the transmission of customer billing information; (2) adoption of a nationwide customer notification procedure; (3) development of a standardized method or methods for billing “transient” calls; and (4) any other technical issues that may arise, as needed.¹⁹ The vast majority of the commenters addressing these issues favor a similar approach.²⁰

III. The Record Demonstrates That Regulatory And Other Barriers Are Interfering With The Free Market Deployment Of CPP By CMRS Carriers And Must Be Eliminated

There is an abundance of evidence in the record demonstrating that several forces – namely (i) state regulations delaying or impeding CPP offerings, (ii) inconsistent or conflicting state notification requirements, (iii) the lack of consistent implementation methodologies, and (iv) LEC refusal to cooperate in the provision of necessary information, connections, or functionalities – are significant barriers to the effective introduction of CPP service.²¹ The existence of these barriers

¹⁹ *Id.*, at 15-16.

²⁰ *See, e.g.*, Comments of Bell Atlantic, at 7-8; Comments of BellSouth Corp. (“BellSouth”), at 5-6 (opposing a regulatory solution to technical problems governing the implementation of CPP and preferring instead development of solutions by industry groups, as driven by consumer demand); Comments of GTE, at 17; Comments of PCIA, at 12-13; Comments of Source One, at 6; Comments of USTA, at 6-7; Comments of U S West, at 6-8 (supporting industry resolution of all implementation issues). *See also* Comments of AirTouch, at 26-29 (generally supporting resolution of technical issues through industry but urging the Commission to require LECs to perform billing and collection for CPP and expressly opposing development of a nationwide federal customer notification procedure).

²¹ *See, e.g.*, Comments of GTE, at 12-16 (noting that state policies can “preclude CPP or severely impair a carrier’s ability to offer CPP,” and citing as other barriers revenue “leakage,” customer perception problems, and the lack of industry standards relating to CPP); Comments of Sprint PCS, at 16-17 (citing several examples of state regulations or policies evidencing “delay in considering requests to offer CPP and an adverse view toward it”); Comments of Omnipoint, at 17-18 (noting that incumbent CMRS carriers are reluctant to offer CPP due to the high costs of implementing the service because of LEC-by-LEC negotiations, individual state notification requirements, and the refusal of some LECs to provide the necessary billing and collection information); Comments of CTIA, at 12-13 and n.26 (“[s]tate bans or delays on CPP

makes clear that CPP will not emerge on a wide scale unless the FCC and the industry work together to develop the appropriate solutions. Maintaining the status quo, as suggested by certain commenters,²² is not, therefore, a sufficient response. Because artificial barriers to the introduction of CPP, such as state regulatory impediments or LEC refusal to interconnect for the provision of CPP service, are currently present, FCC involvement is necessary so that free market forces may be unleashed to ensure the development and success of CPP.

IV. Most Commenters Agree That The Commission Has Legal Authority To Establish A National Policy Promoting CPP And Support Motorola's Specific Suggestions For Overcoming Existing Impediments To The Nationwide Availability Of CPP

In its comments, Motorola advanced the following specific proposals, to be implemented as part of the Commission's national policy for CPP, as means to overcome existing impediments to nationwide availability of a CPP service option: (1) in accordance with its broad authority under 47 U.S.C. § 332(c)(3)(A) over mobile service offerings, the FCC should make clear that state regulatory barriers impeding the introduction of CPP service will not be tolerated; and (2) the FCC should mandate throughout the country incumbent LEC interconnection obligations necessary for the voluntary provision of CPP by CMRS carriers.²³ The comments contain broad support for these proposals.

Initially, most commenters agree that the Commission has clear legal authority to prohibit state barriers to CPP, and echo Motorola's request that the Commission exercise this authority, if

(...Continued)

implementation constitute the primary obstacle to nationwide CPP offerings"); Comments of Source One, at 7 ("the LECs refusal to cooperate with the CMRS provider is a major obstacle to provision of CPP service"); Comments of Vanguard, at 13 (citing the problems of varying state regulations).

²² See generally, e.g., Comments of SBC; Comments of PageNet.

²³ Comments of Motorola, at 9-12.

necessary.²⁴ Numerous commenters also agree that the Commission has clear authority under Section 332(c)(1)(B) to establish federal policies requiring LECs to cooperate in providing CMRS carriers the connections, functionalities, and billing information necessary to implement CPP.²⁵ Significantly, the primary claim advanced by those commenters that challenge the Commission's authority in this regard is that CPP is simply a billing and collection issue subject to state, not federal, regulation.²⁶ In support of this position, these commenters rely primarily on the Commission's statement in the *Arizona Decision* characterizing "calling party pays customer billing" as a billing practice subject to state jurisdiction.²⁷

As pointed out by Motorola in its comments, however, and as noted by numerous commenters,²⁸ the Commission's statement in the *Arizona Decision* does not represent a determination that CPP is wholly a billing issue nor does it indicate that all aspects of CPP are matters for state regulation. The statement was made in passing and, as such, is not based on a reasoned analysis of whether state regulation of CPP constitutes regulation of CMRS rates or entry. Furthermore, CPP is not simply a matter of customer billing; it is a separate service option that is fundamentally different from the existing called party pays model because it involves

²⁴ See, e.g., Comments of AT&T Wireless, at 4-6; Comments of CTIA, at 12-24; Comments of GTE, at 18-21; Comments of PCIA, at 5-9; Comments of Source One, at 7-8; Comments of Sprint PCS, at 12-16; Comments of Vanguard, at 14-17.

²⁵ See, e.g., Comments of AT&T Wireless, at 3-6; Comments of Centennial Cellular, at 3-15; Comments of PCIA, at 7; Comments of Sprint PCS, at 10.

²⁶ See, e.g., Comments of SBC, at 3-4; Comments of U S West, at 8.

²⁷ See *id.* See also *Petition of Arizona Corporation Commission, To Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services*, 10 FCC Rcd 7824, 7837 (1995) (Report and Order and Order on Reconsideration).

²⁸ See, e.g., Comments of GTE at 18-19; Comments of Sprint PCS, at 19; Comments of Vanguard, at 16 n.35; Comments of PCIA, at 8-9.

unique interconnection requirements and is perceived by customers as an additional service option. Moreover, if the *Arizona Decision* is read to give states exclusive authority to regulate all aspects of CPP, it should be overruled because it is incorrect as a matter of law and runs afoul of the FCC authority under Sections 332(c) and 2(b). In short, the *Arizona Decision* should present no impediment to the exercise of FCC authority necessary to ensure the effective delivery of CPP service.

V. Conclusion

As outlined above, the opening commenters broadly agree that widespread availability of a calling party pays service option will serve the public interest and should be fostered at the federal level. The vast majority of the commenting parties also agree that the Commission has the legal authority to establish federal policies promoting CPP service, and urge the Commission to exercise it. Based on the strong record support for this position, Motorola reiterates its request that the Commission establish a national policy promoting the provision of a voluntary CMRS CPP service option and announcing that barriers to the efficient introduction of CPP will not be tolerated.

Respectfully submitted,

Motorola, Inc.

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Dated: January 16, 1997

CERTIFICATE OF SERVICE

I, Robin Walker, hereby certify that on this 16th day of January, 1998, a true copy of the attached "Reply Comments of Motorola, Inc." has been served, via hand delivery, on the following persons:

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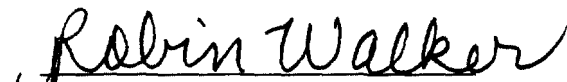
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